

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN**

AF HOLDINGS LLC

Plaintiff

v.

MATTHEW BURNELL

Defendant.

Case No. 1:12-CV-01256

Hon. Janet T. Neff

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DEFENDANT’S REQUEST FOR PRE-MOTION CONFERENCE

NOW COMES Defendant Matthew T. Burnell (“Defendant” or “Mr. Burnell”), by and through his attorneys of record, asks this Court to schedule a Pre-Motion Conference. Mr. Burnell intends to file a motion for dismissal of Plaintiff’s conspiracy and negligence claims under Fed. R. Civ. P. 12(b)(6) for failure to state a claim upon which relief may be granted.

Plaintiff’s complaint has five counts:

- I. Copyright Infringement – Reproduction
- II. Copyright Infringement – Distribution
- III. Contributory Copyright Infringement
- IV. Civil Conspiracy
- V. Negligence

Mr. Burnell will defend himself with respect to the first three claims, the allegations of which he denies in his Answer, filed yesterday (Docket #8). In his Motion and Brief to Dismiss Counts IV and V, also filed yesterday (Docket #6, 7) but stricken by this Court in an Order dated today (Docket #9)¹, Mr. Burnell asks this Court to dismiss Counts IV and V on the grounds that civil conspiracy and negligence claims are preempted by the federal copyright statute, and other federal statutes provide a safe harbor for internet service providers, thereby leaving Plaintiff without relief for Counts IV and V. Plaintiff has filed similar claims in other Courts against other defendants on similar theories, and Courts have consistently dismissed these claims as untenable and failing to state a claim upon which relief can be granted.

For these reason, Mr. Burnell respectfully requests that this Court set a pre-motion conference so that he can proceed with his intention to ask this Court to dismiss Counts IV and C of Plaintiff's complaint.

Respectfully submitted,

Date: December 27, 2012

By: /s/ **G. Thomas Williams**

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¹ The undersigned attorney apologizes to the Court for his misapprehension of this Court's pre-motion requirement. Because the contemplated motion would not have completely resolved the case, the undersigned unfortunately thought the requirement was not necessary, and instead only met and conferred with opposing counsel pursuant to LR 7.1(d).